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In The

Supreme Court of the United States

October Term, 1972

SEP 21 1973

No. 73-195

JOSEPH ZICARELLI,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER

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To the Honorable, The Chief Justice
And the Associate Justices of the
Supreme Court of the United States

This supplemental brief is submitted by petitioner pursuant to Rule 24(5) of the Rules of the Supreme Court in order to bring to the Court's attention a highly significant decision officially reported since the filing of the petition in this case.

On June 5, 1973 the Supreme Court of California decided *People v. Jones*, 108 Cal. Rptr. 345, 510 P.2d 705 (Sup. Ct. 1973). That decision was reported in 13 Cr. L. Rptr. 2293 on July 4, 1973.

In the *Jones* case the defendant had argued that the Sixth Amendment to the United States Constitution entitled him to a jury drawn from the judicial district in California wherein the crime with which he was charged was alleged to have been committed. The defendant there had been tried and convicted in a judicial district other than where the crime was committed by a jury none of whose members were drawn from the district of the crime.

Relying upon this Court's decisions in *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed. 2d 446 (1970) and *Peters v. Kiff*, 407 U.S. 493, 92 S.Ct. 2163, 33 L.Ed. 2d 83 (1972), the court found it "abundantly clear that the vicinage requirement as stated in the Sixth Amendment, namely trial by a jury of the district wherein the crime shall have been committed, is an essential feature of jury trial preserved though changed by the Sixth Amendment and made binding upon the states by the Fourteenth Amendment." 510 P. 2d at 709. The court went on to state:

> "Therefore a criminal defendant in a state criminal prosecution has a constitutional right to be tried by a jury drawn from, and comprising a representative cross-section of, the residents of the district wherein the crime shall have been committed." 510 P. 2d at 709.

Concluding the opinion the court once again reemphasized and restated its holding as follows:

> "To recapitulate, we hold that the Sixth and Fourteenth Amendments to the United States Constitution as interpreted in *Williams* and *Peters*, guarantee a criminal defendant in a state trial the right to be tried by an impartial jury comprising a representative cross section of, and selected from residents of, the judicial district where the crime was committed." 510 P. 2d at 712.

The landmark decision in *People v. Jones, supra,* strongly reinforces the position advanced by petitioner in the first point of his petition. As with the defendant in *Jones,* petitioner was tried in a remote judicial district* from the locale of the crime. Indeed, a comparison with *Jones* will reveal that petitioner's trial was much further from the scene of the crime than was the situation in *Jones* where the trial was *in the same county* but in another district of the state judicial system. Petitioner was tried in and with jurors drawn from "remote, rural Burlington County, far removed from the urban Hudson County locale of the crimes charged " (Petitioner's petition, p. 11).

The decision in petitioner's case now stands opposed to that of one of our most prestigious state courts. In addition, the court in *Jones* also found it necessary to grapple with the decision in *Maryland v. Brown,* 295 F.Supp. 63 (D. Md. 1969), relied upon by the court below and discussed in petitioner's petition. That the questions involved are momentous and should be resolved by this court is made clear by the 4-3 split among the California Supreme Court in *People v. Jones, supra.*

CONCLUSION

For these reasons as well as the reasons set forth in the petition, it is urged that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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*In New Jersey the county is the only designated judicial district.